

IN THE CIRCUIT COURT FOR THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. \_\_\_\_\_

VIRGINIA McGOWAN, for and on behalf of herself  
and on behalf of William “Bill” Conner,  
as Special Administrator of the  
Estate of ABIGAIL MAE CONNER, deceased,  
and JOHN McGOWAN, an individual,

Plaintiffs,

v.

VISIT US, INC., a Florida corporation,  
CLUB MEMBER SERVICES, LLC, a Florida limited  
liability company, IBEROSTAR HOTELES Y  
APARTAMENTOS, S.L., a Spanish limited liability  
company, HOTELERA PLAYA PARAISO, S.A. DE C.V.,  
a Mexican corporation, and HOTELERA PLAYAMAR,  
S.A. de C.V., a Mexican corporation,

Defendants.

\_\_\_\_\_ /

**COMPLAINT FOR DAMAGES**

Virginia “Ginny” McGowan (“Mrs. McGowan” or “Ginny”), for and on behalf of herself  
and on behalf of William “Bill” Conner (“Bill Conner” or “Bill”), as Special Administrator of the  
Estate of Abigail Mae Conner (“Abbey”), and John McGowan (“Mr. McGowan” or “John”),  
Plaintiffs, sue Visit Us, Inc. (“Visit Us”), Club Member Services, LLC (“Club Member Services”),  
Iberostar Hoteles y Apartamentos S.L. (“Iberostar”), Hotelera Playa Paraiso, S.A. de C.V.  
 (“Hotelera Playa Paraiso”), and Hotelera Playamar, S.A. de C.V. (“Hotelera Playamar”),  
collectively the Defendants, and state:

### **NATURE OF THE ACTION**

1. This is a civil action for damages exceeding \$15,000.00 as to each Defendant, excluding interest, costs, and attorney's fees, brought, *inter alia*, pursuant to the Florida Wrongful Death Act, Sections 768.16-.26, Florida Statutes, and the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Sections 501.201-.213, Florida Statutes. This action arises from the tragic, senseless, and entirely avoidable death of a young woman, Abbey Conner. Abbey's death occurred in Florida as a direct result of injuries sustained in Mexico.

### **PARTIES AND JURISDICTION**

2. Plaintiff Ginny McGowan is domiciled in Wisconsin. She is the mother of Abbey. Mrs. McGowan has been appointed and is the Special Administrator of Abbey's Estate ("the Estate") and has been fully and duly empowered to bring and pursue this action on the Estate's behalf. *See* Order and Letters for Special Administration from the Circuit Court of Waukesha County, Wisconsin, dated Nov. 15, 2017, attached as Composite Exhibit "A."

3. Bill Conner is Abbey's father, whose interests are being advanced by Ginny McGowan, as Special Administrator of the Estate.

4. Plaintiff John McGowan is Ginny's husband, and Abbey's stepfather. Mr. McGowan is domiciled in Wisconsin.

5. Defendant Visit Us is a Florida corporation that maintains a registered office located at 3470 NW 82nd Ave., Suite 908, Doral, Florida 33122, and a principal office located at 9250 N.W. 36th St., Suite 360, Doral, Florida 33178. Visit Us controls, and shares the same officers and directors as, Defendant Club Member Services. Visit Us is an agent of Defendant Iberostar. Visit Us, *inter alia*, maintains and operates the website "www.iberostar.com" for and on behalf of itself and the other Defendants.

6. Defendant Club Member Services is a Florida limited liability company that operates from 3470 NW 82nd Ave., Suite 908, Doral, Florida 33122. Club Member Services shares the same officers and directors as Defendant Visit Us and is an agent of the other Defendants.

7. Defendant Iberostar is a Spanish limited liability company (in Spanish, “Sociedad de Responsabilidad Limitada” or “S.L.”). Iberostar’s registered offices are located at C/ General Riera, 154, 07010 de Palma de Mallorca, Spain. Iberostar controls Defendants Visit Us and Club Member Services, and owns and operates the Hotel Iberostar Paraiso del Mar in conjunction with Defendants Hotelera Playa Paraiso and Hotelera Playa Mar.

8. Florida and Wisconsin residents can and do interact and conduct business with Iberostar over its highly-interactive website, “www.iberostar.com” (the “Iberostar Website”) which Iberostar and Visit Us maintain and operate in Florida for the benefit of themselves and the other Defendants. On this website, Iberostar lists the Hotel Iberostar Paraiso del Mar prominently under the section “Riviera Maya | Destinations in Mexico,” which is directly accessible through the “Hotels & Destinations” hyperlink on Iberostar’s homepage. *See* Webpage for the Hotel Iberostar Paraiso del Mar, <https://www.iberostar.com/en/hotels/riviera-maya/iberostar-paraiso-del-mar> (last accessed Apr. 30, 2018).

9. Any Florida or Wisconsin resident, while navigating the Iberostar website, may view, inquire about, and directly order, reserve, and pay for all Iberostar products, services and amenities marketed on and/or otherwise made available through that website, and any such customer may communicate and interact directly with the website’s owner and administrator (*i.e.*, Iberostar and Visit Us) about purchases or potential purchases of the products, services, and amenities offered, either through direct e-mail correspondence and via other direct means, with Visit Us personnel based in Florida.

10. Personal jurisdiction over Iberostar is founded on: (a) Section 48.193(1)(a)(1), Florida Statutes, because it has operated, conducted, engaged in, or carried on a business in Florida and/or has an office or agency in Florida; and/or (b) Section 48.193(1)(a)(2), Florida Statutes, because it has committed a tortious act or acts in Florida, as further alleged here. The claims against Iberostar arise from those contacts with Florida.

11. Additionally, personal jurisdiction over Iberostar is also founded on Section 48.193(2), Florida Statutes, because it has engaged and/or is engaging in substantial, not isolated, activities within the State of Florida. Iberostar's contacts with the state are so continuous and systematic as to render it essentially at home in this State. Specifically, and without limitation, Iberostar owns, operates, administrates, markets, and/or maintains the Iberostar Berkeley Shore Hotel, located at 1610 Collins Avenue, Miami Beach, Florida 33139, through a Florida limited liability company, Berkeley Shore, LLC ("Berkeley Shore"). Berkeley Shore's principal office is located at 1111 Kane Concourse Suite 217, Bay Harbour Islands, Florida 33154.

12. Defendant Hotelera Playa Paraiso is a Mexican corporation (in Spanish, "Sociedad Anonima de Capital Variable," or "S.A. de C.V."). Hotelera Playa Paraiso co-owns and operates the Hotel Iberostar Paraiso del Mar, and maintains an office located at Carretera Federal Chetumal - Puerto Juarez Km. 309, Playa Paraiso, Municipio de Solidaridad, Estado de Quintana Roo, CP 77710, Mexico. On information and belief, Defendant Iberostar is the actual owner of Hotelera Playa Paraiso.

13. Personal jurisdiction over Hotelera Playa Paraiso is founded on: (a) Section 48.193(1)(a)(1), Florida Statutes, because it has operated, conducted, engaged in, or carried on a business in Florida and/or has an office or agency in Florida; and/or (b) Section 48.193(1)(a)(2),

Florida Statutes, because it has committed a tortious act or acts in Florida, as further alleged here. The claims against Hotelera Playa Paraiso arise from those contacts with Florida.

14. Defendant Hotelera Playamar is a Mexican corporation that co-owns and operates the Hotel Iberostar Paraiso del Mar, and maintains an office located at Carretera Costera Sur Km 17.782 SN, Municipio de Cozumel, Estado de Quintana Roo, CP 77675. On information and belief, Defendant Iberostar is the actual owner of Hotelera Playamar.

15. Personal jurisdiction over Hotelera Playamar is founded on: (a) Section 48.193(1)(a)(1), Florida Statutes, because it has operated, conducted, engaged in, or carried on a business in Florida and/or has an office or agency in Florida; and/or (b) Section 48.193(1)(a)(2), Florida Statutes, because it has committed a tortious act or acts in Florida, as further alleged here. The claims against Hotelera Playamar arise from those contacts within Florida.

16. Defendants Iberostar, Visit Us, Club Member Services, Hotelera Playa Paraiso, and Hotelera Playamar are fully interconnected, act as agents for each other when convenient for their business operations, and all effectively conduct business as one entity.

17. Venue is proper pursuant to Section 47.051, Florida Statutes, because, *inter alia*:

- a. Defendants Visit Us and Club Member Services are Florida corporations that are headquartered in Miami-Dade County, Florida; and/or
- b. Defendants Visit Us and Club Member Services are Florida corporations that have, or usually maintain, one or more offices for transaction of their customary business in Miami-Dade County, Florida; and/or
- c. Defendants Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar are foreign corporations doing business in this State that have an agent or other representative located in Miami-Dade County, Florida.

## **GENERAL ALLEGATIONS**

18. On or about November 8, 2016, John reserved a seven-night, all-inclusive stay at the Hotel Iberostar Paraiso del Mar, from January 14, 2017 through January 21, 2017, on behalf of himself, Ginny, his stepdaughter Abbey, and his stepson, Austin (collectively, the “Family”).<sup>1</sup> John made the booking directly through Iberostar’s website, “www.iberostar.com,” which is operated by the Defendants and from which they each derive compensation and benefits.

19. John subsequently modified the reservation dates to January 7, 2017 through January 14, 2017. On or about November 29, 2016, Iberostar, through Visit Us and Club Member Services in Florida, confirmed the Family’s modified reservation by e-mail. Shortly before the Family’s departure, on or about January 2, 2017, Iberostar, again through Florida-based Visit Us and Club Member Services, e-mailed the Family a final booking confirmation.

20. The Family arrived at the Hotel Iberostar Paraiso del Mar at around 3:30 pm on January 7, 2017. John and Ginny were assigned room 1147, and Abbey and Austin, room 1104. After checking in, Abbey and Austin went to John and Ginny’s room and let them know that they would change into their swimsuits and go to the hotel’s pool.

21. After unpacking, John and Ginny proceeded to join Austin and Abbey at the pool. Thereafter, John and Ginny left the kids at the pool, after asking Austin and Abbey to meet them in the lobby for dinner later on.

22. Abbey and Austin remained at the pool. Celebrating the beginning of their vacation, Abbey and Austin also made use of the pool’s swim-up bar, where they were served drinks by the Hotel’s staff.

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<sup>1</sup> To enhance clarity and avoid unnecessary confusion, the Complaint will, where appropriate in the narrative, refer to the Family members and their relatives by either their first or full names.

23. A hotel employee, according to the hotel, at some point was urgently alerted by a guest that two people were drowning in the pool. The hotel employee supposedly called hotel security personnel via radio and headed to the pool, arriving at apparently the same time as a security guard. There, this hotel employee saw a young woman, Abbey, floating face down, and a young man, Austin, kicking and splashing. Both Austin and Abbey were in the very shallow section of the pool. The hotel employee got Abbey out of the pool and handed her, unconscious, to the security guard. The hotel employee then got Austin out of the pool and handed him to a second security guard who was by then at the scene.

24. Notably, no lifeguard or other hotel staff member was stationed at or near the pool.

25. One of the security guards supposedly checked Abbey's pulse, which was weak, and applied CPR. Foam came out of Abbey's mouth. The hotel doctor eventually arrived to take charge of Abbey.

26. After the incident, the hotel's public relations manager sent Ginny an e-mail asking to meet with her in the lobby.

27. Completely unaware of what had happened, John and Ginny waited in vain for Abbey and Austin to arrive for dinner until 8:15 pm.

28. At approximately 8:15 pm, Ginny walked to the front desk and requested hotel personnel to call Abbey and Austin's room. At that time, two members the hotel's staff approached Ginny and told her that the couple had to go with them.

29. John and Ginny were taken to their rooms in a golf cart, where they were told that there had been an incident at the pool: that Abbey had been without air for some time and Austin had been injured. Distraught, John and Ginny were then taken back to the lobby, and ultimately to the hospital.

30. At approximately 9:30 pm, John and Ginny arrived at the hospital, Hospiten Riviera Maya. Abbey was unconscious and on a respirator. Although Austin had regained consciousness, he was sedated. It was eventually determined by the hospital that Abbey had to be transferred to an Intensive Care Unit (“ICU”) in Cancun.

31. Before Abbey could be transferred to the ICU, John and Ginny were told that they must first pay for the Hospiten Riviera Maya’s bills, and then pay a deposit for Abbey and Austin’s transportation to the Cancun hospital. None of the Defendants offered to help the Family pay. John and Ginny had to contact Ginny’s brother, Brian Sprinkman, to provide credit card authorization in the amounts of \$6,371.13 for Hospiten Riviera Maya, and \$10,000.00 as a deposit for the Cancun hospital.

32. Abbey was admitted into Hospiten Cancun on January 8, 2017.

33. At approximately 1:00 pm, to the couple’s horror and dismay, the neurologist at Hospiten Cancun told John and Ginny that Abbey had “very little brain activity.”

34. Upon learning about what had happened, Brian, Ginny’s brother, and Bob, Ginny’s father, both took flights to Cancun, Mexico to be at Abbey’s side.

35. On January 9, 2017, John, Ginny, Brian, and Bob spent most of the day seeking ways to airlift Abbey out of Mexico and back to the United States for better medical treatment. Once again, the Defendants offered no financial help.

36. They initially tried to transport her to Aurora Hospital in Summit, Wisconsin. However, the neurologist there refused to take Abbey in, apparently because her CT scan showed swelling, and the doctor felt that the flight to Wisconsin would take too long.

37. The closest qualified trauma center in the United States willing to accept Abbey was Broward Health Medical Center in Fort Lauderdale, Florida.



38. Austin was discharged from Hospiten Cancun at about 1:00 pm on January 9, 2017.

39. At approximately 8:00 pm that day, John returned to the Hotel Iberostar Paraiso del Mar with Austin.

40. At approximately 3:00 am on January 10, 2017, Abbey, accompanied by Ginny and Ginny's brother Brian, was transported by emergency airlift from Mexico to the Broward Health Medical Center. They arrived at Fort Lauderdale at around 5:00 am and reached the hospital at about 6:00 am.

41. At around 10:00 am that day, John, Austin, and Ginny's father Bob left Mexico to return to the United States. John flew to Fort Lauderdale, where, upon arriving there at 7:20 pm, he met with Ginny and visited Abbey at the Broward Health Medical Center. Bill Conner also rushed to Fort Lauderdale at approximately this time.

42. At Broward Health Medical Center, John, Ginny, and Bill met with a neurologist, who informed them that based on an analysis of Abbey's test results and brain swelling, there would be no chance of survival for Abbey off the ventilator.

43. Abbey was pronounced dead at the Broward Health Medical Center at 12:19 pm on January 12, 2017, with John, Ginny, and Bill at her side. Because she wanted to be an organ donor, Abbey's body was kept on life support until organ recipients were found.

44. In the months following Abbey's tragic death, the U.S. Department of State's Bureau of Consular Affairs for Mexico issued an official travel warning relating to tainted or substandard alcohol for American citizens traveling to Mexico. *See* Raquel Rutledge, "U.S. State Department Warns Tourists About Tainted Alcohol at Mexico Resorts after Blackouts Reported," JOURNAL SENTINEL (Jul. 26, 2017), available at <https://www.jsonline.com/story/news/>

investigations/2017/07/26/u-s-state-department-issues-travel-warning-tainted-alcohol-mexico-resorts-after-tourists-blackouts/513563001/.

45. The *Milwaukee Journal Sentinel* reported that “more than 100 other travelers have told the news organization they had blacked out from small or moderate amounts of alcohol and were robbed, raped or otherwise injured while visiting all-inclusive resorts in Mexico.” Raquel Rutledge, “Senators Demand State Department Do More on Blackouts of Tourists at Mexico Resorts,” JOURNAL SENTINEL (Oct. 31, 2017), available at <https://www.jsonline.com/story/news/investigations/2017/10/31/senators-demand-state-department-do-more-blackouts-tourists-mexico-resorts/815082001/>.

46. According to media reports, Mexican authorities have “raided 31 hot spots in Cancun and Playa del Carmen and seized 10,000 gallons of tainted alcohol from a manufacturing company in early August [2017] following [Abbey] Conner’s death.” FOX NEWS (Aug. 15, 2017), “Mexico Raids 31 Hot Spots, 10,000 Gallons of Illegal Alcohol Seized After Wisconsin Woman’s Death at Posh Resort,” available at <http://www.foxnews.com/world/2017/08/14/mexico-raids-31-hot-spots-10000-gallons-illegal-alcohol-seized-after-womans-death-at-posh-resort.html>.

47. Additional reports indicate that the 10,000 gallons of tainted alcohol were seized “from one company, which Mexican officials call out for ‘bad manufacturing practices.’ The company was not named.” Lisa Gutierrez, MIAMI HERALD (Aug. 14, 2017), “Tourists, be careful: 10,000 gallons of tainted booze seized from Mexico resorts,” available at <https://www.miamiherald.com/news/nation-world/world/article167156242.html>. On information and belief, although Mexican officials have, to date, refused to release its true identity, this unnamed “company” is not a distillery, but a distribution center and delivery service that is a vendor retained by Defendants for supplying alcoholic beverages to the Hotel Iberostar Paraiso del Mar. In the

wake of these raids, Mexican authorities suspended operations of “the lobby bar in the Iberostar Paraiso Maya, a resort in the [same] complex where Abbey Conner . . . drowned amid suspicious circumstances while on vacation with her family . . . .” Raquel Rutledge, “Mexican authorities seize illicit alcohol in crackdown at resorts,” JOURNAL SENTINEL (Aug. 12, 2017), available at <https://www.jsonline.com/story/news/investigations/2017/08/12/mexican-authorities-seize-illicit-alcohol-crackdown-resorts/562027001/>.

48. Most recently, in February 2018, the *Journal Sentinel* reported:

For the second time in one week, Mexican authorities have shut down a black market tequila distillery. More than 1,000 gallons were confiscated on Monday in the latest bust. That came on the heels of more than 18,700 gallons of illegal tequila seized last week. ***Tests found more than 235 gallons of that supply contained dangerous levels of methanol. Methanol is commonly used in windshield washer fluid and as a solvent and is extremely toxic even in small quantities.***

Raquel Rutledge, “Mexico Police Shut Down Second Black Market Tequila Operation, Investigate if Tainted Alcohol Headed to Resorts,” JOURNAL SENTINEL (Feb. 23, 2018) (emphasis added), available at <https://www.jsonline.com/story/news/mexico-blackouts/2018/02/23/police-mexico-shut-down-second-black-market-tequila-operation-investigating-tainted-supplies-reaching-re/365307002/>. “The crackdown comes amid an investigation by the Milwaukee Journal Sentinel exposing how tourists visiting upscale, all-inclusive resorts are reporting they have blacked out — at times becoming violently ill — after drinking a few drinks, sometimes just one.” *Id.*

49. Despite the Mexican government’s acknowledgement that copious amounts of tainted alcohol are present the country’s resorts and in the Mexican supply chain, as reflected through the above-publicized seizures and sting operations conducted by Mexican officials, Mexico’s Secretary of Tourism, Enrique de la Madrid Cordero, has publicly “disputed reports of tainted alcohol” and described the State Department’s warnings as “misleading.” Kevin

Breuninger, “Mexico’s Tourism Secretary Disputes Reports of Tainted Alcohol at Mexican Resorts,” CBNC (Dec. 7, 2017), available at <https://www.cnbc.com/2017/12/07/mexican-official-disputes-reports-of-tainted-alcohol-at-resorts.html>. Nevertheless, “Cordero doesn’t want the U.S. State Department to remove its warnings . . . .” *Id.*

50. Over at least the past two years and possibly longer, Defendants Iberostar, Hotelera Playa Paraiso, Hotelera Playamar, Visit Us and Club Member Services knew that alcoholic beverages being served at the Hotel Iberostar Paraiso del Mar were tainted, substandard, poisonous, unfit for human consumption, and/or otherwise failed to meet bare minimum standards for food and beverage safety (hereafter and collectively, “tainted alcohol”).

51. Abbey Conner unknowingly consumed tainted alcohol at the Hotel Iberostar Paraiso del Mar on January 7, 2017.

52. To date, Defendants have refused to provide any of the family members, including but not limited to John, Ginny, and Bill, with any additional information about the facts and circumstances surrounding Abbey’s drowning.

53. Since Abbey’s drowning, Defendants have denied the Family’s investigator access to the premises at the Hotel Iberostar Paraiso del Mar.

54. Defendants did not express any sort of condolence for Abbey’s death whatsoever until seven months after the fact, when the television program *Good Morning America* publicly aired an interview with members of Abbey’s family about her tragic drowning and untimely death.

55. Despite the above, Defendants have inaccurately asserted in published reports that they have fully cooperated with the Family and with the investigation since Abbey’s death.

56. Plaintiff, as Special Administrator of the decedent’s estate, has retained the undersigned counsel and is obligated to pay them a reasonable fee.

57. All conditions precedent to the filing of this action have been satisfied, waived, or otherwise excused.

**COUNT I WRONGFUL DEATH – NEGLIGENCE**

**(Mrs. McGowan vs. Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar)**

58. Plaintiff Mrs. McGowan re-alleges paragraphs 1 through 57 as fully set forth and incorporated herein.

59. As owners and operators of the Hotel Iberostar Paraiso del Mar, Defendants Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar had the duty to protect Abbey against risks of physical harm.

60. Abbey's plight was reasonably foreseeable and the Defendants Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar had the opportunity to protect her from harms associated with, among other things, consuming tainted alcohol.

61. Despite their knowledge that tainted alcohol festered within local supply chains in Mexico, particularly in resort areas such as Playa del Carmen, Defendants Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar breached their duties to Abbey Conner by failing to:

- a. adequately train managers and staff to identify potentially tainted alcohol;
- b. adequately train managers and staff to identify symptoms consistent with alcohol poisoning and/or poisoning from tainted alcohol, and to render timely and appropriate aid to a victim suffering from such symptoms;
- c. adequately train security personnel for situations involving guests afflicted with alcohol poisoning and/or poisoning from tainted alcohol;
- d. have in place proper and adequate safety and rescue practices;
- e. take adequate measures to prevent tainted alcohol from entering the hotel's premises through the local supply chain;

- f. warn its guests about the known threat of tainted alcohol at Hotel Iberostar Paraiso del Mar, where Abbey and her family stayed;
- g. provide adequate security, medical, and emergency response personnel for hotel guests; and/or
- h. provide adequate security cameras, as well as associated monitoring equipment and personnel, particularly near a pool where no lifeguard was stationed.

62. As a direct and proximate result of Defendants Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar's breaches, Abbey Conner died.

63. As a direct and proximate result of Defendants Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar's breaches, Abbey Conner has suffered special damages, including but not limited to having incurred (1) substantial medical bills for emergency treatment in Mexico and Florida prior to her death, and (2) the significant costs of her emergency international airlift from Mexico to Florida, in amounts to be proven at trial.

WHEREFORE, Plaintiff Virginia McGowan, as Special Administrator of the Estate of the decedent Abigail Mae Conner, demands judgment against Defendants Iberostar, Hotelera Playa Paraiso, and Hotelera Playamar for compensatory and special damages, interest as allowed by law, and any additional relief this Court deems just and proper. Plaintiff reserves the right to amend her pleadings to bring a claim for punitive damages.

**COUNT II WRONGFUL DEATH – NEGLIGENCE**  
**(Mrs. McGowan vs. Visit Us and Club Member Services)**

64. Plaintiff Mrs. McGowan re-alleges paragraphs 1 through 57 as fully set forth and incorporated herein.

65. As part of Iberostar, Defendants Visit Us and Club Member Services are and were at all pertinent times aware of the presence of tainted alcohol in the Mexican supply chain for hotels and resorts, and at the Hotel Iberostar Paraiso del Mar, where Abbey and her family stayed.

66. As Iberostar's booking arm and the first point of contact for guests at Iberostar hotels, including the Hotel Iberostar Paraiso del Mar, where Abbey and her family stayed, Defendants Visit Us and Club Member Services had the duty to protect Abbey Conner against risks of physical harm.

67. Abigail Conner's plight was reasonably foreseeable and Defendants Visit Us and Club Member Services had the opportunity to warn and protect Abigail from harms associated with consuming tainted alcohol. They provided no notices and warnings about the potential threat of tainted alcohol to guests at the hotel, and in particular, the risks of consuming tainted alcohol in a swimming pool, even at shallow depths.

68. Despite their knowledge that tainted alcohol festered within local supply chains in Mexico, and/or knowledge of the fact that Hotel Iberostar Paraiso del Mar served tainted alcohol and/or was ill-equipped to protect its guests from tainted alcohol and the potentially deadly risks associated with consuming tainted alcohol, Defendants Visit Us and Club Member Services breached their duties to Abigail Conner by failing to warn her of:

- a. the fact that hotel managers and staff were inadequately trained to identify potentially tainted alcohol;
- b. the fact that hotel managers and staff were inadequately trained to identify symptoms consistent with alcohol poisoning and/or poisoning from tainted alcohol, and to render timely and appropriate aid to a victim suffering from such symptoms;

- c. the fact that hotel security personnel were inadequately trained for situations involving guests afflicted with alcohol poisoning and/or poisoning from tainted alcohol;
- d. the hotel's lack of proper and adequate safety and rescue practices;
- e. the hotel's lack of adequate measures to prevent tainted alcohol from entering the hotel's premises through the local supply chain;
- f. the known threat of tainted alcohol in the region;
- g. the hotel's inability to provide adequate security, medical, and emergency response personnel for hotel guests; and/or
- h. the hotel's failure to provide adequate security cameras, as well as associated monitoring equipment and personnel, particularly near a pool where no lifeguard is stationed.

69. As a direct and proximate result of Defendants Visit Us and Club Member Services' breaches, Abigail Conner died.

70. As a direct and proximate result of Defendants Visit Us and Club Member Services' breaches, Abbey Conner has suffered special damages, including but not limited to having incurred (1) substantial medical bills for emergency treatment in Mexico and Florida prior to her death, and (2) the significant costs of her emergency international airlift from Mexico to Florida, in amounts to be proven at trial.

WHEREFORE, Plaintiff Virginia McGowan, as Special Administrator of the Estate of the decedent Abigail Mae Conner, demands judgment against Defendants Visit Us and Club Member Services for compensatory and special damages, interest as allowed by law, and any additional



relief this Court deems just and proper. Plaintiff reserves the right to amend her pleadings to bring a claim for punitive damages.

**COUNT III – VIOLATION OF FLORIDA’S  
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT  
(Mr. and Mrs. McGowan vs. All Defendants)**

71. Plaintiffs Mr. and Mrs. McGowan re-allege paragraphs 1 through 57 as fully set forth and incorporated herein.

72. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, acting in concert and as agents for each other, engaged in false, misleading, and deceptive practices by misrepresenting to Mr. and Mrs. McGowan that their family vacation at the Hotel Iberostar Paraiso del Mar would, among other things, comport with bare minimum industry standards with regard to on-premises security, staff training, food and beverage safety, and the investigation or vetting of local alcoholic beverages suppliers to the resort, all the while knowing that such standards were not being adhered to, in violation of Florida’s Deceptive and Unfair Trade Practices Act, Sections 501.201-.213, Florida Statutes.

73. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, used deceptive means to market and promote the Hotel Iberostar Paraiso del Mar vacation package, causing Mr. and Mrs. McGowan to purchase the vacation package under false pretenses and travel with their family to Defendants’ hotel in Playa del Carmen, Mexico, and presenting Mr. and Mrs. McGowan with a standard of service vastly inferior to Defendants’ prior express and implicit guarantees, promises, and representations, in further violation of Sections 501.201-.213, Florida Statutes.

74. For example, and without limitation, Defendants represent in their marketing and advertising materials that “GRUPO IBEROSTAR expects from its suppliers the same principles of behavior that it demands from its organization. As part of this, it communicates to its suppliers

what is expected of them in this regard.” § 4.4 Suppliers, “GRUPO IBEROSTAR Code of Ethics,” available at [https://hotels.cdn.iberostar.com/public/system/html\\_items/78993/original/01\\_codigo\\_etico\\_eng.pdf?1492453113](https://hotels.cdn.iberostar.com/public/system/html_items/78993/original/01_codigo_etico_eng.pdf?1492453113) (last accessed November 26, 2018). On information and belief, Iberostar did not enforce a code of ethics with respect to its purchases of alcohol over the pertinent timeframe.

75. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, (1) prevented issuance of a refund or any other form of compensation to Mr. and Mrs. McGowan, who spent only a small fraction of time purchased at the resort due to their need to be at Abbey’s side in multiple hospitals, (2) refused to acknowledge any form of responsibility for Abbey’s drowning at the resort as a result of consuming tainted alcohol served by the resort’s swim-up bar, and (3) stonewalled, obstructed, hindered, or otherwise impeded investigation of the incident.

76. As a result of Defendants’ false, misleading, and deceptive activities, Mr. and Mrs. McGowan have suffered actual damages, have been forced to pay substantial medical bills for Abbey’s emergency treatment in Mexico and Florida prior to her death, have been forced to incur significant costs associated with Abbey’s emergency international airlift from Mexico to Florida, have had to retain legal counsel to help prosecute claims against Defendants, to pay a reasonable fee for counsel’s services and to pay for costs associated with counsel’s rendering of such services.

WHEREFORE, Plaintiffs Virginia McGowan and John McGowan demand judgment against all Defendants for compensatory and special damages, and interest as allowed by law. Plaintiffs’ damages include but are not limited to: (1) physical, mental, and emotional pain and suffering, and other harms resulting from Defendants’ false, misleading, and deceptive practices, (2) Defendants’ failure to advise, or otherwise make the McGowans aware of the true nature of

their vacation package and of the material risks associated with the non-comporting standard of services and care to be rendered under the vacation package, (3) Defendants' stonewalling and use of other obstructionist tactics in the aftermath of Abbey's drowning to hinder police reporting and proper investigation, and (4) Defendants' refusal to provide the McGowans with any compensation whatsoever for their and their daughter's plight. In addition, pursuant to Section 501.2105, Florida Statutes, Mr. and Mrs. McGowan demand an award of reasonable attorneys' fees and costs, and for any such other relief as the Court deems just and appropriate. Plaintiffs reserve the right to amend their pleadings to bring a claim for punitive damages.

**COUNT IV – VIOLATION OF THE  
WISCONSIN DECEPTIVE TRADE PRACTICES ACT  
(Mr. and Mrs. McGowan vs. All Defendants)**

***In the Alternative to Count III***

77. Plaintiffs Mr. and Mrs. McGowan re-allege paragraphs 1 through 57 as fully set forth and incorporated herein.

78. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, acting in concert and as agents for each other, engaged in false, misleading, and deceptive practices by misrepresenting to Mr. and Mrs. McGowan that their family vacation at the Hotel Iberostar Paraiso del Mar would, among other things, comport with bare minimum industry standards with regard to on-premises security, staff training, food and beverage safety, and the investigation or vetting of local alcoholic beverages suppliers to the resort, all the while knowing that such standards were not being adhered to, in violation of the Wisconsin Deceptive Trade Practices Act, WIS. STAT. § 100.18, *et seq.*

79. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, used deceptive means to market and promote the Hotel Iberostar Paraiso del Mar vacation package, causing Mr. and Mrs. McGowan to purchase the vacation package under false

pretenses and travel with their family to Defendants' hotel in Playa del Carmen, Mexico, and thereafter presenting Mr. and Mrs. McGowan with a standard of service vastly inferior to Defendants' prior express and implicit guarantees, promises, and representations, in further violation of WIS. STAT. § 100.18.

80. For example, and without limitation, Defendants represent in their marketing and advertising materials that "GRUPO IBEROSTAR expects from its suppliers the same principles of behaviour that it demands from its organisation. As part of this, it communicates to its suppliers what is expected of them in this regard." § 4.4 Suppliers, "GRUPO IBEROSTAR Code of Ethics," available at [https://hotels.cdn.iberostar.com/public/system/html\\_items/78993/original/01\\_codigo\\_etico\\_eng.pdf?1492453113](https://hotels.cdn.iberostar.com/public/system/html_items/78993/original/01_codigo_etico_eng.pdf?1492453113) (last accessed November 26, 2018). On information and belief, Iberostar did not enforce a code of ethics with respect to the purchases of alcohol over the pertinent timeframe.

81. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, used fraudulent and deceptive means to, among other things, (1) prevent issuance of a refund or any other form of compensation to Mr. and Mrs. McGowan, who spent only a small fraction of time at the resort due to their need to be at Abbey's side in multiple hospitals, (2) refuse to apologize or acknowledge any form of responsibility for Abbey's drowning at the resort as a result of consuming tainted alcohol served by the resort's swim-up bar, and (3) stonewalled, obstructed, hindered, or otherwise impeded investigation of the incident.

82. As a result of Defendants' false, misleading, and deceptive activities, Mr. and Mrs. McGowan have suffered actual damages, have been forced to pay substantial medical bills for Abbey's emergency treatment in Mexico and Florida prior to her death, have been forced to incur significant costs associated with Abbey's emergency international airlift from Mexico to Florida,

have had to retain legal counsel to help prosecute claims against Defendants, to pay a reasonable fee for counsel's services and to pay for costs associated with counsel's rendering of such services.

WHEREFORE, Plaintiffs Virginia McGowan and John McGowan demand judgment against all Defendants for compensatory and special damages, and interest as allowed by law. Plaintiffs' damages include but are not limited to: (1) physical, mental, and emotional pain and suffering, and other harms resulting from Defendants' false, misleading, and deceptive practices, (2) Defendants' failure to advise, or otherwise make the McGowans aware of the true nature of their vacation package and of the material risks associated with the non-comporting standard of services and care that would be rendered under the vacation package, (3) Defendants' stonewalling and use of other obstructionist tactics in the aftermath of Abbey's drowning to hinder police reporting and proper investigation, and (4) Defendants' refusal to provide the McGowans with any compensation whatsoever for their and their daughter's plight. Mr. and Mrs. McGowan further demand, pursuant to WIS. STAT. § 100.18(11)(b)2, an award of reasonable attorneys' fees and costs, and for any such other relief as the Court deems just and appropriate. Plaintiffs reserve the right to amend their pleadings to bring a claim for punitive damages.

**COUNT V – BREACH OF IMPLIED CONTRACT**  
**(All Plaintiffs vs. All Defendants)**

83. All Plaintiffs re-allege paragraphs 1 through 57 as fully set forth and incorporated herein.

84. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, acting in concert and as agents for each other, had an implied contract, as well as an implied covenant of good faith and fair dealing, with Abbey and Mr. and Mrs. McGowan, as paying guests of a resort that Defendants actively marketed, sold, oversaw, operated, and held out

to comport with expectations of safe accommodation, adequate security, adherence to bare minimum food and beverage safety standards, proper investigation and vetting of local alcoholic beverages suppliers, and services free from injuries.

85. Defendants breached this implied contract and covenant of good faith and fair dealing with Abbey and Mr. and Mrs. McGowan when Defendants, among other things, (1) failed to provide a hotel facility that met bare minimum standards for safety and security, in allowing tainted alcohol to enter resort grounds through the local supply chain and allowing Abbey, after consuming tainted alcohol at the resort's swim-up bar without her knowledge, to drown in the shallow depths of a pool equipped with no lifeguard or any other staff nearby; (2) prevented issuance of a refund or any other form of compensation to Mr. and Mrs. McGowan, who spent only a small fraction of time at the resort due to their need to be at Abbey's side in hospitals, (3) refused to apologize or acknowledge any form of responsibility for Abbey's drowning as a result of consuming tainted alcohol, and (4) stonewalled, obstructed, hindered, or otherwise impeded subsequent investigation of the incident.

86. As a direct and proximate result of Defendants' breach of the implied contract, Plaintiffs were damaged.

WHEREFORE, all Plaintiffs demand judgment against all Defendants for damages resulting from Defendants' breach of implied contract, and for any other relief this Court deems just and appropriate.

**COUNT VI – NEGLIGENT VACATION PACKAGING**  
**(All Plaintiffs vs. All Defendants)**

87. Plaintiffs re-allege paragraphs 1 through 57 as fully set forth and incorporated herein.

88. Defendants, their agents, parent companies, subsidiaries, employees, and representatives, acting in concert and as agents for each other, had a duty to the Plaintiffs, as purchasers of Defendants' vacation package, to investigate and warn as to the reliability (or lack thereof) of the local supplier or suppliers of alcoholic beverages at the resort, and of the ability of such supplier(s) and the resort to provide safe alcoholic beverages to resort guests in a non-negligent manner. They failed to investigate or warn the Plaintiffs in this regard.

89. Were Defendant to conduct an investigation into the reputation and safety records of their resort's local alcoholic beverages supplier or suppliers, Defendants would have discovered the inability to deliver safe, non-tainted alcoholic beverages to the resort's guests, but never disclosed these facts to Plaintiffs.

90. Defendants have breached their duty to Plaintiffs to investigate and/or warn and or otherwise vet the reliability of the supplier or suppliers of alcoholic beverages at the Hotel Iberostar Paraiso del Mar, and of the ability of such supplier(s) to provide safe alcoholic beverages to resort guests in a non-negligent manner.

91. As a result of Defendants' breach of their duty to Plaintiffs: (1) Abbey Conner died, (2) Mr. and Mrs. McGowan experienced physical, mental, and emotional pain and suffering when Abbey Conner was injured in the pool and ultimately died from those injuries, and (3) Bill Conner experienced physical, mental, and emotional pain and suffering as a result of Abbey Conner's death.

92. Defendants designed, managed, controlled, and supervised the resort's procurement of alcoholic beverages through the local supply chain negligently, and as a result, Plaintiffs have been damaged.

93. Defendants are each jointly and severally responsible for the negligence in packaging various aspects of Plaintiffs' vacation.

WHEREFORE, all Plaintiffs demand judgment against all Defendants for damages for negligent vacation packaging, including but not limited to damages for physical, mental, and emotional pain and suffering resulting from Defendants' negligence, and for any other relief this Court deems just and appropriate.

**JURY TRIAL DEMAND**

All Plaintiffs hereby demand a trial by jury on all issues so triable.

Date: November 28, 2018

Respectfully submitted,

DIAZ REUS & TARG, LLP  
100 Southeast Second Street  
3400 Miami Tower  
Miami, Florida 33131  
Telephone: (305) 375-9220  
Facsimile: (305) 375-8050

/s/ Gary E. Davidson

Gary E. Davidson (Florida Bar Number: 69094)  
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Attorney E-mail Address: xzhao@diazreus.com

*Counsel for Plaintiffs*



# **COMPOSITE EXHIBIT “A”**

STATE OF WISCONSIN, CIRCUIT COURT, WAUKESHA COUNTY

IN THE MATTER OF THE ESTATE OF

☐ Amended

ABIGAL MAE CONNER

**Order for  
Special Administration**  
(Formal Administration)

Case No. 2017PR000458

**FILED**

NOV 15 2017

CIRCUIT COURT  
WAUKESHA COUNTY, WI

A Petition for Special Administration was filed or the court acts on its own motion.

**THE COURT FINDS:**

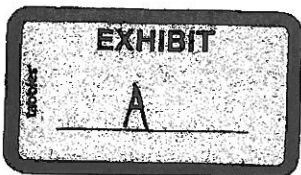
1. The decedent, with date of birth August 4, 1996 and date of death January 12, 2017  
was domiciled in Waukesha County, State of Wisconsin  
with a mailing address of N22 W28080 Edgewater Drive, Pewaukee, WI 53072
2. The court has jurisdiction, is the proper venue and there is a statutory basis for appointment of a special administrator.
3. Notice was  
☐ given to all persons entitled to notice.  
☐ waived.  
☒ deemed unnecessary by the court and the appointment should be made without delay.
- ☐ 4. Other: \_\_\_\_\_

**THE COURT ORDERS:**


1. Letters of special administration be issued to Virginia McGowan  
mailing address N22 W28080 Edgewater Drive, Pewaukee, WI 53072
2. ☐ A signature bond ☐ A surety bond in the sum of \$ \_\_\_\_\_ is required.  
☒ No bond is required.
3. The special administrator is granted  
☒ A. only these specific powers and duties: Bring and pursue a personal injury suit and do all actions necessary to bring and pursue such suit. Settlement of any suit or other proceeding requires the consent of William Conner. Virginia McGowan and William Conner shall execute a stipulation detailing the terms of any settlement and their consent to said settlement. All moneys received by settlement or judgment shall be held in an attorney trust account and no distributions shall be made until further Court order.  
☐ B. (following a hearing on notice to, or waiver of notice by, all interested parties) all the same powers, duties and liabilities as a personal representative.  
☐ Except: \_\_\_\_\_
- ☐ 4. Other: \_\_\_\_\_

**THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL IF SIGNED BY A CIRCUIT COURT JUDGE.**

**BY THE COURT:**



Form completed by: (Name)	
Atty Megan E. Glise	
Address	
Cramer, Multhauf & Hammes LLP 1601 E. Racine Avenue, PO Box 558 Waukesha, WI 53187-0558	
Telephone Number	Bar Number
262-542-4278	1097517

  
Circuit Court Judge/Circuit Court CommissionerJudge Paul Bogenhagen  
Title (Print or Type Name if not eSigned)November 15, 2017  
Date

STATE OF WISCONSIN, CIRCUIT COURT, WAUKESHA COUNTY

IN THE MATTER OF THE ESTATE OF

☐ Amended

ABIGAIL MAE CONNER

**Letters of  
Special Administration**  
(Formal Administration)

Case No. 2017PR000458

**FILED**

NOV 15 2017

CIRCUIT COURT  
WAUKESHA COUNTY, WI

To: Virginia McGowan  
N22 W28080 Edgewater Drive  
Pewaukee, WI 53072

The decedent, with date of birth August 4, 1996 and date of death January 12, 2017  
was domiciled in Waukesha County, State of Wisconsin

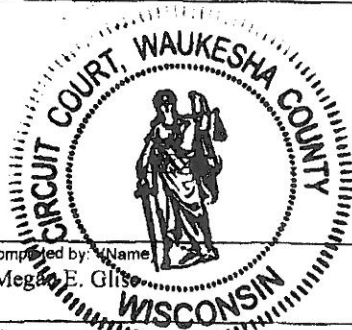
You are granted

☒ only these specific powers: Bring and pursue a personal injury suit and do all actions necessary to bring and pursue such suit. Settlement of any suit or other proceeding requires the consent of William Conner, Virginia McGowan and William Conner shall execute a stipulation detailing the terms of any settlement and their consent to said settlement. All moneys received by settlement or judgment shall be held in an attorney trust account and no distributions shall be made until further Court order.

☐ all the same powers, duties and liabilities as a personal representative.

☐ Except: \_\_\_\_\_

Other: \_\_\_\_\_



Form completed by: Name Atty Megan E. Glise	
Address Cramer, Multhaupt & Hammes LLP 1601 E. Racine Avenue, PO Box 558 Waukesha, WI 53187-0558	
Telephone Number 262-542-4278	Bar Number 1097517

BY THE COURT:

[Signature]  
Circuit Court Judge/Circuit Court Commissioner  
Judge Paul Bogenhagen  
Title (Print or Type Name if not eSigned)  
November 15, 2017  
Date

